

LAW OFFICES OF  
SAUL, EWING, REMICK & SAUL

38TH FLOOR CENTRE SQUARE WEST

PHILADELPHIA 19102

CABLE ADDRESS: BIDSAL  
TELEPHONE (215) 972-7777  
TELECOPIER (215) 972-7725  
TELEX 83-4798

RECORDATION NO. 10532-A  
Filed 1425

FFB 6 1981 -1 40 PM

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HARRISBURG, PA.  
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FRANKFURT/MAIN, GERMANY

DIRECT DIAL (215)

972-7777

INTERSTATE COMMERCE COMMISSION

February 5, 1981

Via Federal Express

Mrs. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

RECORDATION NO. 10532-B  
Filed 1425  
FFB 6 1981 -1 40 PM

RECORDATION NO. 10532-F  
Filed 1425  
FFB 6 1981 -1 40 PM

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

Dear Mrs. Mergenovich:

There are herewith transmitted the following instruments which we desire filed and recorded under the provisions of the Interstate Commerce Act, 49 U.S.C. §11303:

(1) <sup>Three</sup> ~~Two~~ fully executed and notarized originals of a "Lease of Railroad Equipment" dated as of May 7, 1980 between Delaware and Hudson Railway Company, as Lessee, and Heleasco Twelve, Inc., as Lessor, covering 110 50'6" 70-ton boxcars (the "Lease");

(2) Two fully executed and notarized originals of the "Assignment of Lease" dated as of May 7, 1980 by Heleasco Twelve, Inc. in favor of Provident National Bank as Agent, each with the "Consent and Agreements" executed by Delaware and Hudson Railway Company and dated as of May 7, 1980 attached thereto; and

(3) Two fully executed and notarized originals of "Amendment No. 1 to Security Agreement" dated as of May 7, 1980 between Heleasco Twelve, Inc. and Provident National Bank as Agent.

TO INSURE THAT YOUR RECORDING OF THESE INSTRUMENTS IS EFFECTIVE WITHIN YOUR FILING SYSTEM, PLEASE NOTE THAT ALL UNITS SUBJECT TO THE ABOVE-REFERENCED LEASE HAVE BEEN PREVIOUSLY LEASED BY LESSOR TO PICKENS RAILROAD COMPANY AND NATIONAL RAILWAY UTILIZATION CORPORATION AS LESSEE (THE "ORIGINAL LEASE"). THE ORIGINAL LEASE WAS FILED WITH THE INTERSTATE COMMERCE COMMISSION ON JUNE 22, 1979 AND BEARS RECORDATION NUMBER 10532-A. THE UNITS WERE ORIGINALLY ACQUIRED BY LESSOR UNDER

*Eugene Andrews*

**Interstate Commerce Commission**  
Washington, D.C. 20423

2/6/81

OFFICE OF THE SECRETARY

**Anthony F. Walsh**  
**Saul, Ewing, Remick & Saul**  
**38th Floor Centre Square West**  
**Philadelphia 19102**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **2/6/81** at **1:40pm**, and assigned re-recording number(s). **10532-D, 10532-E, & 10532-F**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

The within Lease and all lease rentals and certain other payments derived therefrom are subject to a security interest in favor of Provident National Bank as Agent for certain lenders under a certain Security Agreement dated as of June 21, 1979. This Lease has been executed in several counterparts of which this is Counterpart No. 3. To the extent that this Lease constitutes "chattel paper" or other collateral within the meaning of the Uniform Commercial Code in effect in any jurisdiction, only the counterpart stamped or marked "Counterpart Number 1" shall constitute such chattel paper or other collateral.

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LEASE OF RAILROAD EQUIPMENT

Dated as of May 7, 1980

between

HELEASCO TWELVE, INC.  
as Lessor

and

DELAWARE AND HUDSON  
RAILWAY COMPANY  
as Lessee.

RECORDATION NO. 10532-A  
Filed 1426

FFB 6 1981 -1 40 PM

INTERSTATE COMMERCE COMMISSION

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Filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 on \_\_\_\_\_, 1980, recordation number \_\_\_\_\_, and deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada on \_\_\_\_\_, 1980.

LEASE OF RAILROAD EQUIPMENT  
dated as of May 7, 1980, between

HELEASCO TWELVE, INC.  
a Delaware corporation (the "Lessor")

AND

DELAWARE AND HUDSON RAILWAY COMPANY,  
a Delaware corporation (the "Lessee")

WHEREAS, Lessor is the owner of certain units of railroad equipment described in Schedule 1 hereto and such equipment is subject to the lien and security interest granted to Provident National Bank as agent (the "Agent") for Jefferson Standard Life Insurance Company (the "Lender") as evidenced by a certain security agreement between Lessor and Agent dated as of June 21, 1979 (the "Security Agreement"); and

WHEREAS, the units of railroad equipment described in Schedule 1 were originally leased to National Railway Utilization Corporation and Pickens Railroad Company ("Former Lessees") under a lease dated as of June 21, 1979 ("Former Lease") with the road numbers set forth on Schedule 1 hereto and Agent has terminated the Former Lease and directed the Former Lessees to return all of the units of railroad equipment described in Schedule 1 hereto as soon as possible; and

WHEREAS, the Lessee desires to lease from Lessor and Lessor desires to lease to Lessee such number of the units of railroad equipment described in Schedule 1 hereto as are returned by the Former Lessees (the "Equipment") but only as provided hereinafter; and

WHEREAS, Lessee will consent to the assignment of this Lease to the Agent and acknowledge Agent's lien and security interest in the Equipment;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

Section 1. This Lease is a net lease; the Lessee's obligations hereunder shall be absolute and unconditional, and, except as herein specifically provided in Section 7, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged

to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Agreement or any other instrument confirming the lien of Agent in this Lease or the Equipment leased hereunder (collectively "Security Documents"), or against the Builders identified in Schedule 1 hereto, the Lender or any financial institution providing funds to the Lessor for the purpose of financing or refinancing the "Units", as described in Section 2.3 hereof, or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any failure of Lessor to deliver any of the units of railroad equipment from the Former Lessee or any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, any prohibition or restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or what at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the Lease of any of the units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor or the Lender for any reason whatsoever.

Section 2. Redelivery from Former Lessee; Preparation and Delivery to Lessee.

2.1 Lessor will use its best efforts to cause the Former Lessees to deliver the units of railroad Equipment to Lessor's possession or control as soon as possible after the date hereof and Lessor at its own expense will remove or cause to be removed all decals from said redelivered units and will cause such redelivered units to be painted with the colors, marks and stencils of Lessee, all as provided hereinafter in Section 2.2 hereof.

2.2 Lessor and Lessee have executed as of the date hereof the letter agreement regarding repainting and repair, a copy of which is attached hereto as Exhibit A.

2.3 The Lessor will cause the units of railroad equipment to be delivered to the Lessee at Lessor's expense as provided in the letter agreement attached hereto as Exhibit A.

2.4 Upon delivery of any such unit of railroad equipment as provided in Section 2.3 hereof, the Lessee will cause an employee or agent of the Lessee to inspect each unit and, if such unit is found to be acceptable, shall accept delivery of such unit as Equipment under this Lease for repainting, whereupon, except as provided in the next sentence hereof, such unit shall be deemed to have been delivered to and accepted by the Lessee and shall be Equipment and "Units" subject thereafter to all the terms and conditions of this Lease. When any Unit has been repainted, Lessee shall execute and deliver to the Lessor a confirmatory certificate of inspection and acceptance (the "Certificate of Inspection and Acceptance") in the form attached hereto as Exhibit B, stating that such Unit has been inspected, accepted, repainted and is marked in accordance with Section 5 hereof.

2.5 Simultaneously with the execution of this Lease, the Lessee is entering into a lease of like railroad equipment, also as lessee, with the Lessor's affiliate, Heleasco Eleven, Inc., as lessor (the "Second Lease"). Subject to all of the other provisions of this Lease, the Lessee agrees to lease all of the units described in Schedule 1 subject to the following conditions:

(a) If at least 90 percent of the total combined units which may be covered by both this Lease and the Second Lease have been delivered by Lessor and accepted for repainting at facilities approved by Lessee on or before August 31, 1980, the Lessee will be obligated, but only until August 31, 1981, to accept delivery of all remaining undelivered units subject to this Lease..

(b) If less than 90 percent of the combined units set forth in Schedule 1 of both this Lease and the Second Lease have not been delivered by Lessor and accepted for repainting at facilities approved by Lessee on or before August 31, 1980, but the total combined number of units of equipment either repainted or in Lessor's possession or control pending repainting (as certified to Lessee by Lessor) as of August 31, 1980 equals at least 90 percent of the total combined units set forth in Schedule 1 of both this Lease and the Second Lease, then in such case Lessee shall accept additional units delivered hereunder during September, 1980, and if the Lessor shall during such time cause to be delivered and the Lessee shall accept a sufficient number of combined units so that the Lessee is in possession of at least said combined 90 percent of the total units which may be covered by this Lease and the Second Lease on or before September 30, 1980, the Lessee will thereafter be obligated, but only until August 31, 1981, to accept delivery of all remaining undelivered units subject to this Lease.

The Basic Term of this Lease shall commence on October 1, 1980. The Basic Rent for any unit accepted after the commencement of the Basic Term shall be reduced by the number of quarters and/or fractions thereof for the time period after October 1, 1980 up to and including the date of execution by Lessee of a Certificate of Inspection and Acceptance hereunder. As to fractions of a quarter, rent shall be reduced by the daily interim rate set forth in Section 3.1 for each day of the quarterly period such Unit was not accepted by means of a Certificate of Inspection and Acceptance hereunder executed by Lessee, and the pro rata Basic Rent for such quarterly period shall be due and payable on the fifteenth (15th) day of the month following such acceptance.

### Section 3.

3.1 Basic Rent. The Lessee agrees to pay to the Lessor as rental for each unit subject to this Lease one interim payment and 58 consecutive quarterly payments payable in advance. The interim payment for each such Unit previously accepted by Lessee shall be payable on October 1, 1980, and shall be in an amount equal to the product of the Purchase Price set forth in Schedule 1 hereto for such Unit multiplied by .031627 percent for each day elapsed from and including the date of issuance for the Certificate of Inspection and Acceptance for such Unit to, but not including, October 1, 1980. The 58 quarterly payments are payable on October 1, January 1, April 1 and July 1 in each year, commencing October 1, 1980, to and including January 1, 1995. Basic Rent for any Unit accepted by Lessee between September 15 and September 30, 1980 and otherwise due October 1, 1980 shall be due and payable on October 15, 1980. Each such quarterly payment shall be in an amount equal to 2.8464 percent of the Purchase Price of each such unit then subject to this Lease. The interim payment and the quarterly payments hereinbefore described are hereinafter referred to as the "Basic Rent." The date on which each payment of Basic Rent is due as aforesaid is herein referred to as the "Due Date."

3.2 Rent Payments. If any rental payment date referred to above is not a business day, the rental otherwise payable on such date shall be payable on the next business day. The term "business day", as used herein, means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Philadelphia, Pennsylvania are authorized or obligated to remain closed. The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease (including, but not limited to, the payments provided for in this Section 3 and in Section 7 hereof), at the principal office of the Agent, for the account of the Lessor in care of the Agent, with instructions to the Agent to apply such payments in accordance with the provisions of the Security Agreement and to pay any balance immediately by wire transfer to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in federal or other funds immediately available to the Agent by 11:00 a.m. in the city where such payment is to be made, on the date such payment is due.

3.3 Rent Upon Default. After the occurrence of any event of default under Section 10 hereof and so long as such event of default shall continue and this Lease shall not have been terminated, in addition to the rental for each unit payable pursuant to the preceding subsections 3.1 and 3.2, any nonpayment of rental shall result in the obligation on the part of Lessee to pay also an amount equal to 16 percent per annum (or the lawful rate, whichever is less) of the overdue rentals for the period of time during which they are overdue.

Section 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date the unit is accepted for repainting by Lessee. However, the obligation of Lessee for Basic Rent shall not commence until issuance by Lessee of its Certificate of Inspection and Acceptance, and subject to the provisions of Sections 7, 10 and 13 hereof, shall terminate on March 31, 1995. The Basic Term shall commence on October 1, 1980, and, subject to the provisions of Sections 7, 10 and 13 hereof, shall terminate on March 31, 1995. The obligations of the Lessee hereunder under Sections 6, 7, 9, (paragraph 3 only) 14 and 17 hereof shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Agent under the Security Documents. If an event of default should occur under the Security Documents, the Agent may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder and (ii) the Lessee is complying with the provisions of the Consent and Agreement, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under Section 12 hereof.

Section 5. Identification Marks. After the initial repainting and renumbering at Lessor's expense as provided in Exhibit A, Lessee shall thereafter, at its own expense, cause each Unit to be kept numbered with the Lessee's new road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED UNDER THE INTERSTATE COMMERCE ACT, 20-C."

or

"TITLE TO THIS CAR IS SUBJECT TO DOCUMENTS RECORDED  
WITH THE INTERSTATE COMMERCE COMMISSION."



with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to and interest in, and Agent's interest in, such Unit and the rights of the Lessor under this Lease and the rights of the Lender under the Security Documents. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change or permit to be changed the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Agent and the Lessor and duly filed, recorded and deposited by the Lessee in all offices where the Lease and the Security Documents shall have been filed and (ii) the Lessee shall have furnished the Agent and the Lessor an opinion of counsel to such effect and that no other filings are necessary to protect Lessor's and Agent's rights in and to such Units in the United States or Canada. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership. Any markings indicating that any Unit has been assigned to a specified shipper shall not be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax, and other than the aggregate of all state or local taxes measured by net income based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes which would be payable to the state and locality in which the Lessor has its principal place of business without apportionment to any other state and other than the amount of such excess state and local taxes to the extent that they reduce any other taxes payable by the Lessor and other than any state franchise tax which is not based on or measured by net income, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions

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which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions (other than under the Security Agreement) which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and the Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Lender under the Security Documents. The Lessee agrees to give the Lessor notice of such contest brought in the Lessee's name within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

Lessee agrees to and does hereby indemnify Agent and Lenders with respect to impositions to the same extent as Lessor is indemnified under this Section 6. Accordingly, the term "Lessor", as used in this Section 6, shall be read as "Lessor and/or Agent and Lender" as is appropriate in the context in which it is used. Notwithstanding the foregoing, Lessee shall not be responsible for any "imposition" resulting from any use of a Unit by the Former Lessees.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Lender in such Units, as shall be satisfactory to them or, where not so permitted, will notify the Lessor and the Lender of such requirement and will prepare and deliver such reports to them within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to them; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file required returns, statements and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. All costs and expenses (including legal and accounting fees) of preparing such returns or

reports shall be borne by the Lessee. To the extent that the Lessor has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein. The Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid by the Lessee, provided no Event of Default (or other event which, after notice or lapse of time or both, would become an Event of Default) shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after-tax rate of return and after-tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed.

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee agrees that, at the Lessee's own cost and expense, it will be responsible for all maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in good operating order, repair and condition, eligible for interchange service, and in compliance with the requirements of any governmental authority having jurisdiction thereof.

In the event that any Unit shall be or become lost, stolen, destroyed, or, in Lessee's reasonable determination, worn out, irreparably damaged or rendered permanently unfit for use, from any cause whatsoever,

or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period in excess of 90 consecutive days, except requisition for use by the United States Government or any other governmental authority ("Government") for a stated period not to exceed the remaining term of the Lease (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in Section 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Lender with respect thereto. On the rental payment next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated by Lessee for the disposal of the Unit as hereinafter set forth and any storage costs incurred until such disposal.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be an amount equal to the percentage of the Purchase Price of such Unit set forth in Schedule 2 hereto applicable to such payment date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term thereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be 30% of the Purchase Price of such Unit (unless such termination occurs after the term of this Lease has been extended pursuant to § 13 hereof, in which case the amount of such Casualty Value shall be as agreed upon between the Lessor and the Lessee at the time of such extension). Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit.

The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence by reason of its being worn out, destroyed, irreparably damaged, or rendered permanently unfit for use under this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, has made any payments required by § 6 hereof and no Event of Default or event which, after notice or lapse of time or both, would have become an Event of Default shall have occurred and be continuing the Lessee shall be entitled to a fee of ten percent (10%) of the proceeds of such sale and, in addition thereto, to the balance of the proceeds of such sale, after reimbursement to Lessor of its expenses incurred in connection with such sale, to the extent they do not exceed the Casualty Value of such Unit and shall pay any excess to the Lessor.

In the event of the requisition for use (which is not a Casualty Occurrence) by Government of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit, including, without limitation, the obligation to make rental payments as provided in Section 3 hereof, shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to Section 11 or Section 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall, in all other respects, comply with the provisions of said Section 11 or Section 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use during the term or any extended term of this Lease of such Unit by the Government shall be paid over to, or retained by the Lessee provided no Event of Default (or other event which, after notice or lapse of time or both, would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use after the term of this Lease of such Unit shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained all-risk, physical loss and damage insurance in respect of the Units in an amount at least equal to the Casualty Value of such Units at the time subject hereto, unless such insurance shall not be available generally within the industry, and public liability insurance in amounts (but not less than \$3,000,000 per accident) and against risks customarily insured against by others in the Lessee's industry in respect of similar equipment. All such insurance shall be in such form and written by such companies as may be reasonably acceptable to the Lessor and Agent. All policies evidencing such insurance shall contain an agreement by the insurers that such policies shall not be cancelled or the amount of coverage thereof or persons covered thereunder adversely changed without at least 30 days' prior written notice to the Lessor and the Agent by the insurers or the insurers' authorized representative, as the case may be. All policies shall name as additional assureds (as their interests may appear) the Lessor, and Agent so long as the indebtedness, if any, evidenced by the Security Documents shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit and provided that

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no Event of Default (or other event which, after notice or lapse of time or both, would become an Event of Default) shall have occurred and be continuing pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired, and provided that no Event of Default (or other event which, after notice or lapse of time or both, would become an Event of Default) shall have occurred and be continuing.

Section 8. Reports and Inspection. On or before March 31 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Lender (a) an accurate statement (i) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documents, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs or then withdrawn from use pending such repairs and such other information regarding the condition and state of repair of the Units as the Lessor or the Lender may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documents have been preserved or replaced and (iii) setting forth a description of the insurance in effect with respect to the Equipment pursuant to § 7 hereof, and (b) a certification of insurance coverage from the Lessee's independent broker stating the amounts of such insurance in effect. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Lender of any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to § 7 hereof.

The Lessee shall furnish to the Lessor and Lender the reports required to be furnished to the Lessor pursuant to Exhibit A attached hereto.

Section 9. Disclaimer of Warranties; Compliance With Laws and Rules. THE LESSOR REPRESENTS THAT IT ACQUIRED TITLE TO THE UNITS DIRECT FROM THE BUILDER INDICATED ON SCHEDULE 1, HAS MADE NO TRANSFER OF ANY INTEREST IN THE UNITS EXCEPT FOR THE SECURITY INTEREST TO AGENT AND THE LEASEHOLD INTEREST OF THE FORMER LESSEES, WHICH LEASEHOLD INTEREST HAS NOW BEEN TERMINATED. THE LESSOR MAKES NO OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR

PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole costs and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Sections 6 and 7 of the Purchase Agreement; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Inspection and Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Lender, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with all lawful rules of the U.S. Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may, upon written notice to the Lessor and Lender, at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Lender, adversely affect the property or rights of the Lessor or the Lender under this Lease or under the Security Documents. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease. Any additions, modifications and improvements made by the Lessee (other than additions, modifications and improve-

ments required to maintain each Unit's eligibility for interchange service or to comply with the provisions of the first paragraph of § 7 or the first sentence of this paragraph) which are readily removable without causing material damage to the Units shall be owned by the Lessee and, provided Lessee shall repair the damage caused by such removal, may, except if an Event of Default or an event which, with the lapse of time and/or demand, or both, shall constitute an Event of Default, shall have occurred and then be continuing, be removed by the Lessee at any time during the term of this Lease or any renewal thereof and prior to the return thereof to the Lessor pursuant to § 14 hereof.

Except for breach by Lessor of the warranty set forth at the outset of this Section 9, the Lessee agrees to indemnify, protect and hold harmless the Lessor, Agent and Lenders from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof (except for Lessor's willful misconduct or negligence) and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as a result of the entering into or the performance of this Agreement or the occurrence of an Event of Default hereunder or an Event of Default under the Security Documents arising as a result thereof, this Lease, the ownership of any Unit, the use, operation, condition, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 14 of this Lease, or the transfer of title to the Equipment by the Lender pursuant to any provision of the Security Documents resulting from a default under this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease and the return of the Units as provided in Section 14 of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the Note Indebtedness and shall not be deemed to operate as a guarantee of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States federal income taxes and state and city income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be



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caused by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (an "Event of Default") shall occur:

(a) default shall be made in payment of any amount provided for in Sections 3, 7 or 13 of this Lease and such default shall continue for five (5) business days;

(b) default shall be made in payment of any other amount provided for in this Lease and such default shall continue for five (5) business days after written notice from the Lessor or the Lender to the Lessee specifying the default and demanding that the same be remedied;

(c) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest therein, or of the right to possession of the Units, or any thereof;

(d) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Consent and Agreement, continuing for thirty (30) days after written notice from the Lessor or the Lender to the Lessee specifying the default and demanding that the same be remedied;

(e) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent and Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(f) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which

does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent and Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent and Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(g) any representation or warranty of the Lessee contained herein shall be, when made, or, if such representation or warranty shall be continuing, shall become inaccurate in any material respect;

then, in any such case, the Lessor, at its option, may:

(i) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall terminate as though this Lease had never been made, but the Lessee shall remain liable only as herein provided; and thereupon the Lessor may, by its agents, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, sell, operate, lease to others and enjoy the same free from any right of the Lessee to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which, under the terms of this Lease, may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as liquidated damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify:

(x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of 10% per annum discount, compounded quarter-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, provided, however, that in the event that the Lessor shall have rented any Unit, then the reasonably estimated rental with respect to any such rental period shall be equal to that rental actually obtained by Lessor during such rental period; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this clause (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives (i) any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law and (ii) any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, upon such further notice, if

any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities of the Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor and shall give prompt telegraphic notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit so delivered shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall:

(a) forthwith and in the usual manner, place such Units upon such storage tracks of the Lessee or any of its affiliates or any other railroad as the Lessor shall be able to reasonably designate, and Lessee shall be responsible for all additional storage expenses;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the

Lessor for each day after such termination an amount equal to .031627 percent of the Purchase Price of such Unit and such payment shall not affect the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

Section 12. Assignment; Possession and Use. This Lease shall be assigned in whole by the Lessor to Agent as of the date hereof and Lessee agrees to execute a further consent and agreement ("Consent and Agreement") confirming Agent's lien for the benefit of Lenders in this Lease, the Equipment leased hereunder and all proceeds of the foregoing. All the rights of the Lessor hereunder (including, but not limited to, the rights under Sections 6, 7, 9 and 10 and the rights to receive the rentals payable under this Lease) shall inure, to the extent assigned, to the benefit of the Lessor's assigns (including the Lender); and the fact that the Lender is specifically named herein in certain provisions shall not be construed as limiting the rights assigned to the Lender pursuant to such assignment.

So long as no Event of Default or event which, after notice or lapse of time or both, would become an Event of Default under the Lease or the Security Documents shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor and the Lender and further provided that any such assignment or transfer shall be expressly subordinate to the rights of Lessor and Lender, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor, Former Lessees, or the Lender or resulting from claims against the Lessor, Former Lessees, or Lender) upon or with respect to any Unit or the interest of the Lessor, the Lender or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor and Lender, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as no Event of Default or event which, after notice or lapse of time or both, would become an Event of Default under the Lease shall have occurred and be continuing, the Lessee shall be entitled to the possession of the Units and shall also be entitled (i) to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and (ii) to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder, under the Closing Agreement and under the Consent and Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee; provided, however, (i) that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease, (ii) such assignee, Lessee or transferee shall be of a character so that after giving effect to such merger, consolidation, lease or acquisition, the ability of the assignee, lessee or transferee to perform the obligations of the Lessee hereunder shall not, in the reasonable opinion of the Lessor and the Lender, be adversely affected, and (iii) that such acquisition or lease of railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Lender hereunder which shall be and remain those of a principal and not a surety.

Section 13. Renewal Options and Purchase Option.  
Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder or under any other agreement with Lessor, the Lessee shall have the right and option of renewal for two five (5) year extensions of the Basic Term, subject to written notice delivered to the Lessor not less than six (6) months nor more than nine (9) months prior to the end of the original term or the first extended term of this Lease, and provided that it is not in default, as aforesaid, the Lessee may elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for a five-year term commencing on the scheduled expiration of the original term or the first extended term of this Lease, as the case may be. Such extension shall be on the same terms and conditions as are contained in this Lease, except as to the amount of rentals, which shall be at a "Fair Market Rental"

(as defined in this Section 13) payable quarterly in advance, and except as to applicable Casualty Values, which shall be as agreed upon between the Lessor and the Lessee at the time of such extension.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months nor more than nine months prior to the end of the original term or any extended term of this Lease, elect to purchase all but not fewer than all of the Units then covered by this Lease at a Fair Market Purchase Price (as defined in this Section 13) payable at the end of the then current term of this Lease.

Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the rental or purchase price, as the case may be which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise its purchase option, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, the same shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination thereof by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental or Fair Market Purchase Price, as the case may be, of the Units within 90 days after his appointment. If, because of their use hereunder or otherwise, any of the Units shall not be available for inspection at reasonably designated times and places, such appraiser shall be authorized and entitled to assume in delivering his report hereunder that such Units are in good condition and that Lessee has fulfilled with respect thereto all of its obligations hereunder. If the parties shall have appointed a single appraiser, the determination of the single appraiser appointed shall be final. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and Fair Market Purchase Price and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units Upon Expiration of Lease Term. As soon as practicable on or after the termination of the term of this Lease otherwise than pursuant to § 10 hereof (and in any event not later than 90 days after the termination of the term of this Lease), the Lessee will, at its own cost and expense, at the request of the Lessor, cause each Unit to be transported to the point or points listed on Schedule 3 attached hereto as shall be designated by the Lessor at least four (4) months immediately prior to such termination; the assembly, delivery, and transporting of each Unit to be at the expense and risk of the Lessee. The assembling, delivery, and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, and transporting of the Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. Lessee further agrees, at Lessor's request, to paint over Lessee's markings.

In the event all Units are not returned to Lessor at the termination of the Lease, Lessee shall pay to Lessor the Fair Market Rental for each Unit not so returned for each day from the termination of the Lease to the day such Unit is returned in accordance with the provisions of this Section 14. The amounts to be paid under the preceding sentence shall be due and payable on the first day of each month subsequent to the termination of the Lease, such payments to be made by immediately available funds wire transferred to a bank designated by Lessor. Lessee shall deliver to Lessor on each date such payments are to be made a statement as to the computation and correctness of such payments.

Section 15. Recording. The Lessee, at its own expense, will cause this Lease and any supplement thereto and any lease assignment and confirmatory security agreement required by Agent and Lender to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documents and will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Lender for the purpose of proper protection, to their satisfaction, of the Lender's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documents and the assignments hereof and thereof to the Lender; and the Lessee will promptly furnish to the Lender and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect



thereto satisfactory in form and substance to the Lender and the Lessor except that such opinion shall not opine as to the effect of any filing in Canada. This Lease and the Security Documents shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

Section 16. Lessee's Representations and Warranties. Lessee represents and warrants as of the date hereof that:

(i) The Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business and is in good standing in such other jurisdictions in which the failure so to qualify or be in good standing might materially and adversely affect the ability of the Lessee to perform its obligations under this Lease.

(ii) The Lessee has full power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Lease and the Consent and Agreement and to fulfill and comply with the terms, conditions and provisions hereof and thereof; this Lease and the Consent and Agreement have been duly authorized, executed and delivered and, assuming in the case of this Agreement due authorization, execution and delivery thereof by the other parties hereto, each constitutes a valid, legal and binding agreement, enforceable in accordance with its terms.

(iii) There are no actions, suits or proceedings (whether or not purportedly on behalf of the Lessee) pending or (to the knowledge of the Lessee) threatened against or affecting the Lessee or any property or rights of the Lessee at law or in equity, or before any commission or other administrative agency, which could materially and adversely affect the condition, financial or other, of the Lessee; and, the Lessee is not, to its knowledge, in default with respect to any order or decree of any court or governmental commission, agency or instrumentality which could materially and adversely affect the condition, financial or other, of the Lessee.

(iv) The Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction materially and adversely affecting the business, present or proposed, of the Lessee, or the operations, property or assets or condition, financial or other, of the Lessee.

(v) Neither the execution and delivery of this Lease or the Consent and Agreement, nor the consummation of the transactions herein and therein contemplated or the fulfillment of, or compliance with the terms and provisions hereof and thereof, will conflict with, or result in a breach of, any of the terms, conditions or provisions of the certificate of incorporation or the by-laws of the Lessee or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Lessee or upon the Equipment pursuant to the terms of any such agreement or instrument.

(vi) Neither the execution and delivery by the Lessee of this Lease, nor the consummation of the transactions herein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof, will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality or arbitrator applicable to the Lessee.

(vii) No authorization or approval is required from any governmental or public body or authority having jurisdiction over the Lessee or the Equipment in connection with the execution and delivery by the Lessee of this Lease or the Consent and Agreement, or the fulfillment of or compliance with the terms, conditions and provisions hereof and thereof or the transactions contemplated thereby.

(viii) The Lessee has filed all foreign, Federal, state and local tax returns which (to its knowledge) are required to be filed, and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and which in the aggregate do not involve material amounts.

(ix) The Lessee has furnished to the Lessor and the Lenders consolidated balance sheets of the Lessee as of December 31, 1979 and related consolidated statements of income and retained earnings for the year then ended; such consolidated financial statements are in accordance with the books and records of the

Lessee and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the period covered thereby and on a basis consistent with prior periods; and such statements present fairly the financial condition of the Lessee at such date and the results of its operations for such period. There has not been any material adverse change in the assets, liabilities or financial condition of the Lessee since December 31, 1979.

(x) The Lessee is not in default in the payment of principal of or interest on any indebtedness for borrowed money or in default under any instruments or agreements under or subject to which any indebtedness for borrowed money has been issued or in default under any long-term rental obligation under which the Lessee is the lessee, and no event has occurred and is continuing under the provisions of any such instrument or agreement which, with the lapse of time or the giving of notice or both, would constitute an event of default thereunder, other than defaults which would not have a material adverse effect on the Lessee's ability to perform its obligations under this Lease.

(xi) Within twenty-one days following the execution and delivery of this Lease, such Lease and any lease assignment required by Agent will be deposited with the Registrar General of Canada (and provision made for publication of notice of such deposit in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada.

Section 17. Indemnity for Federal and Other Income Tax Benefits; Indemnity for Improvements. It is the intent of the Lessor and Lessee that this Lease will be recognized as a lease for all federal, state, city and local income taxes or franchise taxes imposed on or measured by net income, and that the Lease does not convey to the Lessee any right, title or interest in the Units except as lessee and that for United States income tax purposes (and to the extent applicable for state and local tax purposes) the Lessor as the beneficial owner of the Units purchased by it, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the Code), to an owner of property including, without limitation, (i) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on an amount at least equal to the aggregate Purchase Price of the Units purchased by the Lessor utilizing the 12-year depreciable life prescribe

for the Units in the Asset Guideline Class No. 00.25 in accordance with 167(m) of the Code, employing the double declining balance method of depreciation, switching to the sum of the years-digits method when most beneficial to the Lessor and taking into account an estimated gross salvage value of 20% of the basis of the Units, which will be reduced by 10% of such basis as provided in Section 167(f) of the Code) (such deduction being herein called the ADR Deductions); (ii) deductions with respect to interest payable under the Conditional Sale Agreement pursuant to section 163 of the Code (such deductions being herein called the Interest Deduction); and (iii) the 10% investment credit (such credit being herein called the Investment Credit) with respect to the aggregate Purchase Price of the Units pursuant to section 38 and related sections of the Code.

The Lessee agrees that neither the Lessee nor any corporation controlled by the Lessee, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under the Lease on the dates due thereunder, except as specifically provided in the Lease and that each will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that the Lessee will not at any time during the term of the Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; and the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Lessor within 30 days after receipt of a written demand thereof.

If by reason of any breach of the foregoing representation or any act or omission of the Lessee or for any other reason caused by the Lessee, the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of, or shall be required to recapture all or any portion of, the Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of any Unit (any such loss; disallowance, recapture or treatment being hereinafter called a Loss), then, unless the Lessee shall exercise its option pursuant to the proviso contained in this paragraph, the Lessee shall, beginning with the next succeeding rental payment date after written notice is given to the Lessee by the Lessor of such fact, and on each succeeding rental payment date, pay to the Lessor such amount or amounts as shall

cause the Lessor's net return to equal the net return that would have been realized by the Lessor if such Loss had not occurred (which it is understood includes giving effect to any federal, state or local income tax required to be paid by the Lessor with respect to receipt of payments made to it by the Lessee pursuant to the operation of this paragraph) and the Lessee shall forthwith pay to the Lessor the amount of any interest and/or penalties which may be assessed by the United States of America or any state or local taxing authority against the Lessor attributable to such Loss; provided, however, that in the event of any Loss of the Investment Credit, the Lessee may, in lieu of making the payments as hereinabove provided, at its option, pay to the Lessor on the next succeeding rental payment date after written notice is given to the Lessee by the Lessor of the fact of such Loss, a single payment in an amount as shall, in the reasonable opinion of Lessor and agreed to by the Lessee, cause said Lessor's net return to equal the net return that would have been realized by the Lessor if such Loss had not occurred (which payment shall also give effect to any federal, state or local income tax required to be paid by the Lessor due to such payment), together with payment of any amount equal to any interest and/or penalties which may be assessed by the United States of America or any state or local taxing authority against the Lessor attributable to such Loss.

Notwithstanding any other provision of this Lease, the indemnities of the Lessee contained in this Section run solely to the Lessor and not to any real or purported assignee or transferee of the Lessor where such assignment or transfer results in a taxable transaction.

If the deductions, credits or other benefits to which the Lessor is entitled are increased or decreased by a change in law (other than a change in income tax rates) that is effective prior to the delivery of the Units which are affected by the change, the rental and Casualty Value shall be adjusted appropriately by agreement of the Lessor and the Lessee so that the Lessor's net return shall not be increased or decreased by reason of such change; provided, however, that any decreases of the rental or Casualty Value pursuant to this paragraph shall not cause such rental or Casualty Value to be less than the amounts required to satisfy the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) and any interest thereon.

In the event that payments are required of the Lessee under this Section, the Casualty Values shall be increased or decreased accordingly for the purposes of this.

Section and, upon the subsequent occurrence of a Casualty Occurrence, the Lessee shall pay any increase, or be credited with any decrease, in such Casualty Values and paid the amount of such decrease by the Lessor promptly after and to the extent of receipt by the Lessor from the Agent of the portion of any Casualty Value paid by the Lessee as a result of such Casualty Occurrence; provided, however, that in no event shall such Casualty Values be reduced below the amount required to satisfy the Conditional Sale Indebtedness.

If a claim shall be made by the Internal Revenue Service or any state or local taxing authority with respect to the income tax liability of the Lessor which, if successful, would under this Section lead to payments by the Lessee or a lump sum payment by the Lessee, the Lessor (as a precondition to receiving any such payments) shall give prompt notice of such claim to the Lessee and shall take such action to contest such claim as the Lessee shall reasonably request in writing from time to time, provided, however, that within 30 days after notice by the Lessor of such proposed adjustment, the Lessee shall request that such adjustment be contested; and provided further, however, that an Event of Default shall not be continuing under this Lease. For purposes of this paragraph, "prompt notice" shall mean written notice to the Lessee not less than 30 days before the expiration of the time period for initiating a contest of such claim. The Lessor may in its discretion forego any administrative appeal with the Internal Revenue Service in respect of such claim and the Lessor may at its option, either pay the tax claimed and sue for refund in the appropriate United States District Court or in the United States Court of Claims, as the Lessor may elect, or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee may make concerning the most appropriate forum in which to proceed; provided, however, that the final decision as to selection of the forum shall be solely that of the Lessor. If the Lessor pays the tax claimed and sues for refund, payments by the Lessee shall be required so as to maintain the Lessor's net return in the manner and to the extent provided in this Section, and the Lessee shall forthwith pay to the Lessor the amount of any interest and/or penalty assessed against the Lessor with respect to such additional income tax; provided, however, that the Lessee shall not be required to make any such payments unless the Lessor agrees in writing to apply any refund in accordance with the next following sentence. If the Lessor receives a refund as a

result of contesting such claim, the Lessor shall forthwith pay to the Lessee any interest thereon paid by the taxing jurisdiction together with the appropriate amount of any interest and/or penalty payments which should not have been assessed against and paid by the Lessee to the Lessor pursuant to the preceding sentence, and the payments of the Lessee with respect to such claim shall, beginning with the next rental payment due after receipt by the Lessor of such refund, be decreased to such amount or amounts as shall cause the Lessor's net return over the term of the Lease to equal the net return that would have been realized by the Lessor if additional income taxes of the Lessor in the amount refunded had not been paid but not below the amounts required to satisfy the obligations of the Lessor under the Conditional Sale Agreement. Any such contest shall be at the sole expense of the Lessee and the Lessee agrees to pay to the Lessor on demand any expense incurred by the Lessor in connection with such contest; and the Lessor shall have no obligation to continue such contest in the event the Lessee fails to make such payment within 10 days after written demand.

The Lessee's and Lessor's agreements to pay any sums which may become payable pursuant to this Section shall survive the expiration or other termination of this Lease.

In the event and to the extent that the cost of any improvement and/or addition (hereinafter called Capital Expenditures) to a Unit made by the Lessee, under and pursuant to the terms of the Lease or otherwise, is required to be included in the gross income of the Lessor for federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the Lessee shall, beginning with the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to the Lessor pursuant to the last paragraph of this Section after said inclusion in the Lessor's gross income is required, and on each succeeding rental payment date, pay to the Lessor such amount or amounts as shall, after taking into account any present or future tax benefits that the Lessor reasonably anticipates it will derive from its additional investment in the Units (including without limitation, any available current deduction, current and future depreciation deductions and investment tax credit) cause the Lessor's net return to equal the net return that would have been realized by the Lessor if the cost of such

Capital Expenditures had not been includible in the Lessor's gross income (which payment shall also give effect to any federal, state or local income tax required to be paid by the Lessor due to such payment); provided, however, that the Lessee shall not be required to make any such payments unless the Lessor agrees in writing to contest such inclusion if requested in writing by the Lessee and as provided in this Section.

In determining the present or future tax benefits to be taken into account by the Lessor in establishing the payments required hereby, the Lessor shall attempt to maximize such benefits and hence minimize those payments by making such elections (including where advantageous the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conventions and accounting methods as will further such objectives; provided, however, that the Lessor shall not be required to make any election or utilize a particular convention or accounting method if the Lessor determines, in its sole discretion but in good faith, that in so doing it will adversely affect its federal, state or local income tax liability determined without regard to this transaction.

For the purposes of this Section, the cost of Capital Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Lessor for federal, state or local income tax purposes" if such inclusion is required by (i) any provision of the Code or state or local income tax law or the applicable regulations enacted or adopted thereunder as of the date of the Lease; or (ii) any published revenue ruling of the Internal Revenue Service issued as of the date of the Lease which has not been held invalid by a court having appellate jurisdiction over the federal income tax liability of the Lessor in a decision which has become final.

The Lessor shall not be required to contest a claim made by the Internal Revenue Service or any state or local income taxing authority with respect to the includability of the cost of any Capital Expenditure in the Lessor's gross income unless the Lessor has received an opinion from counsel selected by the Lessee and acceptable to the Lessor that there is a reasonable basis for contesting such inclusion.



The Lessee agrees to make a payment to the Lessor for any interest and/or penalties resulting from the failure to include the cost of Capital Expenditures in its income tax return, such payment to be made upon demand in amount sufficient to restore the Lessor to the same position it would have been in had such interest and/or penalties not been imposed; and such amount shall be determined in the reasonable opinion of said Lessor and agreed to by the Lessee.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event that the Lessor gives the Lessee written notice that the Lessor's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Capital Expenditures which are of a type or which the Lessee believes are of a type, or are of a type which the Lessee has been advised by the Lessor may be of a type, required to be included in the gross income of the Lessor for federal, state or local income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor describing such Capital Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

Section 18. Opinion of Lessee's Counsel. Lessee shall have delivered to Lessor and Agent upon execution of this Lease by Lessee the opinion of its counsel that:

(i) The Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business and is in good standing in such other jurisdictions in which the business and activities of the Lessee require such qualification; or if not so qualified, its failure so to qualify in any other jurisdiction will not have a materially adverse effect on this Lease or the Consent and Agreement;

(ii) The Lessee has full corporate power, authority and legal right to carry on its principal business as now conducted and to perform its obligations under this Lease and the Consent and Agreement;

(iii) Neither the execution and delivery of this Lease or the Consent and Agreement nor the consummation of the transactions herein and therein contem-

plated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the articles of incorporation (as amended) or the bylaws (as amended) of the Lessee, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder;

(iv) To the knowledge of counsel, neither the execution and delivery by the Lessee of this Lease or the Consent and Agreement nor the consummation of the transactions herein and therein contemplated, nor the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality;

(v) Except for the respective interests of the Owner or the Lender in the Equipment under the Lease, to the knowledge of such counsel, no mortgage, deed of trust or other lien of any nature whatsoever, now in existence and which now covers or affects any property or interest therein of the Lessee, now attaches, or hereafter will attach, to the Equipment, or in any manner affects or will affect adversely the right, title and interest of the Owner or the Lender therein;

(vi) To the knowledge of counsel there are no actions, suits or proceedings pending or threatened against or affecting the Lessee, or any of its property rights, at law or in equity, or before any commission or other administrative agency, which could materially and adversely affect the condition, financial or other, of the Lessee, or its ability to perform its obligations under this Lease or the Consent and Agreement and the Lessee is not in default with respect to any order or decree of any court or governmental commission, agency or instrumentality of which such counsel has knowledge;

(vii) The Lease shall be filed and recorded with the Interstate Commerce Commission in accordance with the requirements of the Interstate Commerce Act, and no other filing, recordation, deposit or registration is necessary in order to protect the interest and rights of the Owner in and to the Lease, or in the Equipment, in the United States of America, any state thereof or the District of Columbia;

(viii) No authorization or approval from any governmental or public body or authority of the United States of America, or of any of the states thereof or the District of Columbia is, to the knowledge of said counsel, necessary for the execution, delivery and performance of this Lease or the Consent and Acknowledgement.

Section 19. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, Suite 203 Springer Building, 3411 Silverside Road, Wilmington, Delaware 19810, attention: President; and

(b) if to the Lessee, at 40 Beaver Street, Albany, New York, 12207, attention: Vice President-Finance,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice to Lessor shall be given to the Agent at Seventeenth and Chestnut Streets, Philadelphia, Pennsylvania, 19101.

Section 20. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

Section 21. Cooperation with Agent and Lenders. Lessee agrees to take such steps and execute such documents as such Agent shall reasonably require in order to confirm the security interest of Agent in the Equipment and this Lease.

Section 22. Right of Lessor to Perform. If any event set forth in clause (d) of the first paragraph of Section 10 hereof occurs, the Lessor may, after the expiration of any notice periods specified therein, observe or perform any such covenants, conditions and agreements of the

Lessee, the non-observance or non-performance of which caused such default, in order to cure such default. Lessee hereby agrees that the amount of any payment made in connection therewith and the amount of the reasonable expenses of the Lessor incurred in connection with such observance or performance, together with interest at the rate of 16 percent per annum (or the maximum per annum rate of interest permitted by law, whichever is less) on such amounts from the time such payment shall be payable by the Lessee upon demand of the Lessor.

Section 23. Successors and Assigns. This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

Section 24. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart number one (1) delivered to the Agent shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

Section 25. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

Section 26. Within two (2) weeks of the execution by both parties hereto of this Lease, the Lessor will deliver to the Lessee all necessary Universal Machine Language Equipment Register (UMLER) information, so as to enable the Lessee to register the Units with the Association of American Railroads.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

(Corporate Seal)

Attest: W. W. Turner  
Assistant Secretary

HELEASCO TWELVE, INC.

By: R. L. Beckuschoff  
President

(Corporate Seal)

Attest: R. E. Long  
Assistant Secretary

DELAWARE AND HUDSON RAILWAY  
COMPANY

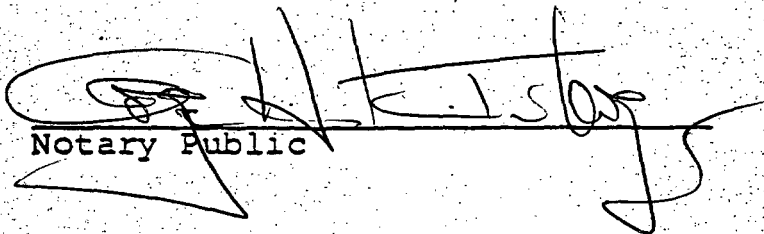
By: D. D. Muir  
Vice President

STATE OF NEW YORK:

ss.

COUNTY OF ALBANY :

On this 23rd day of June , 1980, before me personally appeared D. D. Muir , to me personally known, who, being by me duly sworn, says that he is a Vice President of Delaware and Hudson Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
 Notary Public

SEAL

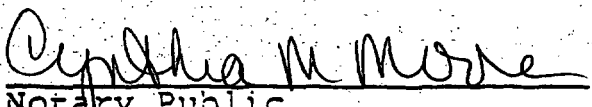
GEORGE H. KLEINBERGER  
 Notary Public - State of New York  
 Qualified in Schenectady County  
 Reg. No. 2144350  
 Commission Expires March 30, 1981

STATE OF DELAWARE :

ss.

COUNTY OF NEW CASTLE:

On this       day of       , 1980, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is       of Heleasco Twelve, Inc., that one of the seals affixed to the foregoing instrument is the seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
 Notary Public

SEAL

NOTARY PUBLIC  
 My commission expires April 28, 1982

<u>Builder</u>	<u>Description</u>	<u>Quantity</u>	<u>Former Lessee's Road Numbers (Both Inclusive)</u>	<u>Delaware and Hudson's Road Numbers (Both Inclusive)</u>	<u>Unit</u>	<u>Total</u>	<u>Lessor's Original Purchase Price</u>
Evans Transportation Company (Southern Iron & Equipment Company Division)	50' 6", 70-ton, Plate "C", Rigid Underframe Boxcars with 10' 0" Sliding Doors (Type XM)	110	NSL 155582 through 155609 and PT 205050 through 205131	D&H26215 through 26242 and D&H25700 through 25774 and D&H26243 through 26249	\$40,600	\$4,466,000	
							TOTAL PURCHASE PRICE \$4,466,000

SCHEDULE 2 TO LEASE  
CASUALTY VALUES

<u>Rental Payment No.</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment No.</u>	<u>Percentage of Purchase Price</u>
Interim	111.81	31	76.50
1	113.50	32	73.54
2	114.57	33	72.56
3	115.02	34	71.57
4	113.99	35	70.54
5	114.04	36	67.38
6	114.35	37	66.25
7	114.88	38	65.11
8	113.56	39	63.93
9	113.95	40	60.62
10	114.33	41	59.33
11	107.62	42	58.04
12	106.03	43	56.71
13	106.13	44	53.29
14	106.21	45	51.84
15	106.27	46	50.40
16	104.12	47	48.91
17	104.04	48	45.45
18	103.93	49	43.84
19	96.73	50	42.25
20	94.45	51	40.60
21	94.06	52	37.15
22	93.66	53	35.38
23	93.23	54	33.63
24	90.53	55	31.86
25	89.97	56	30.00
26	89.40	57	30.00
27	81.74	58	30.00
28	79.05		
29	78.22		
30	77.36		

SCHEDULE 3 TO LEASE  
DELIVERY POINTS

Upon the expiration or termination of the Lease, the points or areas in which Lessor may designate a yard or yards to which the Units are to be delivered are as follows:

- (1) Albany, New York
- (2) Buffalo, New York
- (3) Scranton, Pennsylvania
- (4) Allentown, Pennsylvania
- (5) Bethlehem, Pennsylvania

As an alternative to the foregoing, upon the expiration or termination of this Lease, Lessor may direct Lessee to deliver the Units to Hagerstown, Maryland for interchange to connecting carriers for furtherance beyond Hagerstown at Lessor's expense, but only if Lessee then has operating rights through to such point.



1. Financial Information: The Lessee will deliver or cause to be delivered to the Lessor and to the Lender (i) as soon as available, and in any event within 90 days after the end of the applicable accounting period, copies of the consolidated balance sheet of the Lessee as of the end of its first, second and third quarterly accounting periods in each of its fiscal years and copies of the related consolidated statements of income and retained earnings of the Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year, (ii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the consolidated balance sheet of the Lessee as at the end of such fiscal year, and of the statements of income and retained earnings of the Lessee for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by independent public accountants of recognized national standing, (iii) as soon as available, a copy of each published financial report and, if requested in writing, the Annual Report to the Interstate Commerce Commission which is required to be filed by the Lessee and (iv) with reasonable promptness, such other data and information as from time to time may be reasonably requested.

2. Certificate as to Defaults:

- a. The Lessee will deliver or cause to be delivered to the Lessor and the Lender (i) as soon as available and in any event within 120 days after the end of each fiscal year, a certificate signed by the President, any Vice President or the senior financial officer of the Lessee stating that a review of the activities of the Lessee during such year has been made under his supervision with a view to determining whether the Lessee has kept, performed and fulfilled all of its obligations under the Lease and that, to the best of his knowledge, the Lessee, during such year, has kept, performed and fulfilled each and every covenant, obligation and condition contained in the Lease, or, if a default shall exist or have existed, specifying such default and the nature and status thereof.
- b. The Lessee will deliver or cause to be delivered to Lessor and to Lender, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default under the Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

DELAWARE AND HUDSON RAILWAY COMPANY  
ALBANY, NEW YORK 12207

May 7, 1980

Heleasco Twelve, Inc.  
Suite 203 Springer Building  
3411 Silverside Road  
Wilmington, Delaware 19810

Attention: President

Gentlemen:

Delaware and Hudson Railway Company ("D&H") is willing to repaint and restencil 110 boxcars presently bearing road numbers NSL 155582 through 155609 and PT 205050 through 205131, subject to the following conditions:

(1) Price will be \$600 per car.

(2) The boxcars will be painted at Oneonta, New York, to which they will be transported at tariff rates and at your expense.

(3) Acceptance by D&H of any or all of the boxcars for purposes of repainting and restenciling hereunder shall constitute acceptance of delivery of said cars under the Lease of subject boxcars which has been entered into between you, as lessor, and D&H, as lessee, simultaneously with the date of this letter. Notwithstanding the commencement of the Lease by acceptance hereunder, no rental obligation of D&H shall commence under the Lease until the repainting contracted for hereunder shall have been accomplished.

(4) D&H will cause each boxcar delivered to Oneonta, New York to be inspected by D&H. D&H will not repaint any such unit found by such inspection to be unacceptable for service under the Lease. If the inspection discloses defects that D&H can repair, D&H will notify Heleasco of such defects, and the approximate cost of repairs. Thereafter, unless Heleasco shall object, D&H will perform the necessary repairs for Heleasco's account unless the cost of such repairs can, by the interchange rules, be billed to National Railway Utilization Corporation or a subsidiary railroad.

If the above terms and conditions are satisfactory, please sign both this letter and the enclosed copy hereof where indicated,

Heleasco Twelve, Inc.

May 7, 1980

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and return the fully signed copy to the undersigned.

DELAWARE AND HUDSON RAILWAY COMPANY

By: \_\_\_\_\_

Vice President

The above terms and conditions  
are accepted this \_\_\_\_\_ day of  
\_\_\_\_\_, 1980

HELEASCO TWELVE, INC.

By: \_\_\_\_\_

President

CERTIFICATE OF INSPECTION  
AND ACCEPTANCE NO. \_\_\_\_\_

L-41

Delaware and Hudson Railway Company as Lessee under a Lease of Railroad Equipment dated as of May 7, 1980, with Héleasco Twelve, Inc., as Lessor DOES HEREBY CERTIFY THAT the Units listed below have been delivered to Lessee, inspected, and have been accepted under the Lease, the terms of which are incorporated by reference, with all representations and warranties contained therein repeated as of the date hereof. The obligation of Lessee for Basic Rent shall commence as of the date of this Certificate indicated below.

Type of Equipment: 50'6" 70-ton rigid underframe  
boxcars with 10' sliding  
doors.

Number of Units: \_\_\_\_\_

New Road Numbers: \_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have executed and delivered this confirmatory Certificate of Inspection and Acceptance this \_\_\_\_ day of \_\_\_\_\_, 1980.

DELAWARE AND HUDSON RAILWAY COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ :  
ss.  
COUNTY OF \_\_\_\_\_ :

On this \_\_\_\_ day of \_\_\_\_\_, 1980 before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is \_\_\_\_\_ of Delaware and Hudson Railway Company, that the foregoing instrument was signed on behalf of said corporation, by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(NOTARIAL SEAL)

EXHIBIT B